Testimony of Stephen G. Foresta
Partner at Orrick, Herrington & Sutcliffe LLP

Before the Connecticut General Assembly
Insurance and Real Estate Committee
Regarding Raised Senate Bill 953
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Chairmen Crisco and Megna, and members of the Committee: Thank you for permitting me to testify today in support of Raised Senate Bill 953 and to urge this Committee to vote it favorably out of Committee. My name is Stephen Foresta and I am the Head of the Litigation Department at Orrick, Herrington & Sutcliffe, a global law firm that counts among its clients, various policy owners who are involved in litigation against life insurance companies. On a personal note, it is a privilege to be able to testify before a group of legislators from my home state of Connecticut. Although I work in Manhattan, I have lived for the past 22 years in Fairfield County and my wife and I have raised our three sons here. So we are among the people in this State that Raised Senate Bill 953 is meant to protect.

In my professional life I have devoted a substantial amount of time over the last five years fighting for the rights of life insurance policy owners who have faced a series of unfair practices by unscrupulous insurance companies -- and there are only a few of them – who are doing everything in their power to drive a stake through the heart of the $30 billion secondary market for life insurance policies. As a consequence of facing billions of dollars in potential liabilities on life insurance policies placed into the secondary market by consumers, certain life insurers have resorted to underhanded and illegal tactics to destroy the value of these legitimate investments. These abusive practices have created disruption and uncertainty in the secondary life insurance market. That's bad for innocent investors like Fortress or companies like Barrett Advisors that service those investors' life insurance policies. But it's also bad for me, my neighbors, and anyone else in this State who owns a universal life insurance policy and may someday choose to sell that asset for its true value. Raised Senate Bill 953 is a step in the right direction toward addressing at least one of those tactics; namely, the practice of illegally raising cost of insurance rates.

Now, most life insurers live up to their end of the bargain and pay claims when they come due, regardless of whether the policies are in the hands of the original owner or a secondary market purchaser, such as Fortress. But there are bad apples out there, and none is more prominent than Phoenix Life Insurance Company.

In 2011, for instance, a Phoenix subsidiary denied 20% of the life insurance claims that it received for payment. To put that denial rate in context, the industry average is less than 1%. And in March 2012, less than 72 hours after a Phoenix executive urged this Committee to reject a more expansive version of Raised Senate Bill 953, Phoenix filed eight lawsuits in a Delaware federal district court against policy owners. In each case, Phoenix asked to invalidate a life insurance policy that had been in force for several years and allow it to keep all of the premiums paid on the policy.

And then, of course, there was Phoenix's decision in 2010, and again in 2011, to raise the cost of insurance rate on a select group of universal life insurance policies. As you can see from the letters behind Exhibit A, Phoenix refused to disclose even the most basic information --like the rationale for the rate increase, the affect of the increase on future premium payments, and most importantly, why the increase was permitted under the terms of the policy.

Why didn't Phoenix disclose this information to its policyholders? I believe the answer is simple: Phoenix didn't have the authority to increase the cost of insurance rates on those or any other policies. But you don't have to take my word for that. Both the New York Department of Financial Services and the Wisconsin Department of Insurance have ordered

Phoenix to rescind its 2010 rate increase, and we suspect that other states will follow their lead in the months ahead.

While it's too late for this Committee to help the owners of the 30 Phoenix policies in Connecticut that have already been subject to a cost of insurance rate increase, it's not too late to protect the policyholders who own the other 13,500 Phoenix policies that are currently in force in this state. Raised Senate Bill 953 is a step in the right direction because it requires life insurers to prominently disclose something – the possibility that policy premiums may be increased in the future – that insurers like Phoenix would prefer to bury in the small print deep inside their insurance policies. In the words of the great United States Supreme Court Justice Louis Brandeis: "Sunshine is the best disinfectant."

But although Raised Senate Bill 953 is a good start, I urge this Committee to amend the bill to include the additional disclosure obligations found in the amendment that Senator Crisco filed last year. Consumers in the State of Connecticut deserve to know why a life insurer has raised the cost of their life insurance policy. Otherwise, they are at the whim of companies like Phoenix.

Thank you for your time and attention. I am happy to answer any questions that you might have.